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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/858,122	05/15/2001	Steven Bruce Katz	021756-050600US	1464
20350                      7590                      11/02/2009 TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834				
			EXAMINER CHONG CRUZ, NADJA N	
			ART UNIT 3623	PAPER NUMBER
			MAIL DATE 11/02/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# **Advisory Action** **Before the Filing of an Appeal Brief**

<b>Application No.</b> 09/858,122	<b>Applicant(s)</b> KATZ ET AL.
<b>Examiner</b> NADJA CHONG CRUZ	<b>Art Unit</b> 3623

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 22 October 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## **NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

## **AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☒ Applicant's reply has overcome the following rejection(s): claims 230 and 231 rejected under 35 USC § 112.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 140-145,150,151,155-159,162,169-174,182,183 and 230-236 as finally rejected.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

## **AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

## **REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.

/Beth V. Boswell/  
Supervisory Patent Examiner, Art Unit 3623

Continuation of 3. NOTE: The proposed amendment impacts the existing grounds of rejection, requires consideration of the prior art of record, and a new search. Further the proposed amendment does not reduce or simplify issue for appeal in that the entry of the amendment may require a new grounds of art rejection.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues that the prior art of record, specifically Ouimet (1) fails to teach anything about analyzing internal and external data pertaining to components to be procured by an enterprise, where the analysis includes determining criticality ratings for the components that indicate the strategic importance of the components to operations of the enterprise, and where the analysis is performed based on a first set of user-defined parameters that qualify the internal or external data as recited in claim 140. As an initial matter, Applicants note that the cited section of Ouimet makes no reference at all to the recited internal and external data of claim 140; Ouimet fails to disclose the recited criticality rankings of claim 140; The weights of Ouimet are completely unrelated to components to be procured by an enterprise. As such, the weights of Ouimet cannot be properly construed as corresponding to a "criticality rating for a component... [that] indicates the strategic importance of the component to operations of the enterprise" as recited in claim 140; Ouimet fails to disclose the recited "first set of userdefined parameters" of claim 140. Nowhere does Ouimet indicate that such target values qualify internal or external data pertaining to components to be procured by an enterprise and that (2) Ouimet fails to teach anything about analyzing internal and external data to forecast prices for components to be procured by a business or enterprise from external suppliers as recited in claim 140; Ouimet fails to teach or suggest "analyzing... the internal and external data using a second analysis module to forecast prices for the plurality of components set by suppliers external to the enterprise" as recited in claim 140.

In response to Applicant's argument (1). Examiner respectfully disagrees. Fox teaches analyzing by the computer system of internal and external data in col. 12, lines 1-9; col. 14, lines 53-56; Analysis of the potential impact is made. Fox does not expressly teach the following limitations. However Ouimet in an analogous art of strategic planning for the purpose of determining criticality ratings (§ 0069) as shown does:

using a first analysis module to determine criticality ratings for the plurality of components, wherein the criticality rating for a component indicates the strategic importance of the component to operations of the enterprise, and wherein the analyzing performed using the first analysis module is based on a first set of user-defined parameters that qualify the internal or external data (§ 0069 teaches that "[s]trategic objectives are also included in the Aggregate Measure Table and are selected by the user" (e.g., user-defined parameters). "The system gives the user the option of ranking" (e.g., criticality ratings) "the multiple Strategic Objects" (e.g., strategic importance of the plurality of components) "in terms of weights to prioritize multiple strategic objectives or in terms of a target value for a particular Strategic Objective." (e.g., a first set of user-defined parameters) "When presented with a target value for a Strategic Objective, the system operates to find the proper weight" (e.g., determine criticality ratings) "for the Objective that will yield the target value after optimization. When presented with the weight of a Strategic Objective, the system proceeds to optimize" (e.g., qualify the internal or external data) "the model in light of that weight." Further, Ouimet provides a method for controlling the optimization of a planning model while simultaneously satisfying at least one strategic objective, therefore, Ouimet analyzes the strategic importance of the component to operations (e.g., planning, pricing, forecasting) of the enterprise. (Ouimet ¶ 0010).

Applicant's argument (2) is directed toward the new added limitation in claim 140 as proposed, which will not be entered for the reasons above. Thus, the argument is moot.